IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 384 OF 1995

The Commissioner of Income Tax, Bombay .. Applicant
V/s.
Taj Trade & Transport Co. Ltd., Bombay .. Respondent

Mr. R.V. Desai, Sr. Advocate with Ms. S.V. Bharucha for the Applicant
Mr. P.C. Tripathi with Mr. Dinesh Vyas for the Respondent

CORAM : S. RADHAKRISHNAN &
J.P. DEVADHAR, JJ.
DATED : 28.02.2005

P.C.:-

1. Heard the learned counsel for the Applicant and the Respondent. The following two questions are referred:-

> "i. Whether, on the facts and in the circumstances of the case and in law, the Income-tax Appellate Tribunal is justified in holding that the assessee is entitled to deduction u/s. 80HHC of the Income-tax Act, in respect of the sales across the counter to foreign tourists and that the Commissioner of Income-tax (Appeals) was justified in allowing the same?
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> ii. Whether, on the facts and in the circumstances of the case and in law, the Income-tax Appellate Tribunal is justified in upholding the order of the Commissioner of Income-tax (Appeals) directing the Income-tax Officer to compute the disallowance in respect of expenditure incurred by the assessee on the provision of remuneration and benefits to its employee-directors u/s. 40(c) and not under s. 40A(5) of the Income-tax Act, 1961?"

2. Both the learned counsel states that the first question is squarely covered by judgment of the Supreme Court in **CIT v. Silver and Arts Palace 2003 (259) ITR 684 (S.C.)**. In view thereof, the first question is answered in the affirmative, i.e. in favour of the assessee and against the Revenue. As far as the second question is concerned, both the learned counsel concede

that the said question is squarely covered by a judgment of Division Bench of our Court in **CIT v. Hico Products P. Ltd. (1993) 201 ITR 567 (Bom.)**. In view thereof, the second question is answered in the affirmative, i.e. in favour of the assessee and against the Revenue.

(S. RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)